In the High Court of Punjab and Haryana at Chandigarh

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R.S.A.No.282 of 2000

Date of decision: 15.1.2007

Kulwant Singh and others .. Appellants

Versus

Mr.Harsaran Singh and others ..Respondents

Coram: Hon'ble Mr.Justice S.S.Saron

Present: Mr.S.D.Sharma,Sr.Advocate
with Mr.Amrit Paul,Advocate
for the Appellants
Mr.B.R.Mahajan,Advocate
for the respondents.

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S.S.Saron,J(Oral)

Learned Senior counsel appearing for the appellants on instructions from Shri Amrit Pal, Advocate, assisting him in the case, submits that the land measuring 25 kanals 3 marlas comprised in rectangle No.152, Khasra No.21, 22/1 and Rectangle No.153, Khasra No.25/2 is under mortgage with possession with defendants Nos.1 to 3 and appellants. It is therefore, contended that decree for possession in respect of the said land without getting the same redeemed could not have been passed by the courts below. It is submitted that the learned Sub Judge Ist Class, Patti has held the plaintiff entitled to the possession of the entire land measuring 50 kanals 5 marlas, whereas the defendants Nos.1 to 3 are admittedly in possession of the aforesaid land. Besides, land measuring 25 kanals 2 marlas comprised in Rectangle No.185, Khasra No.2 min., 3,8 and 13/1 is already in possession of the plaintiffs. Therefore, it is submitted that the decree of the learned lower Appellate Court is liable to be modified to the said extent.

In response, learned counsel for the plaintiffs-respondents submits that defendant No.4 was originally a co-plaintiff with the plaintiffs Nos.1 and 2 being a lessee of plaintiff Nos.1 and 2 in respect of land measuring 25 kanals 2 marlas

comprised in Rectangle No.185, Khasra No.2 min,3,8 and 13/1. However, defendant Nos.1 to 3 took the stand that the said land measuring 25 kanals 2 marlas was in possession of plaintiff No.3. Therefore, plaintiff Nos.1 and 2 transposed plaintiff No.3 as defendant No.4 and sought possession in respect of the said land measuring 25 kanals 2 marlas from defendant No.4. It is however, accepted by the learned counsel appearing for the plaintiffs-respondents that land measuring 25 kanals 3 marlas comprised in Rectangle No.152 Khasra No.21 and 22/1 and Rectangle No.153 Khasra No.25/2 is in possession of the appellants. He further states that possession in respect of the same would be taken by lawful means after getting the land redeemed in accordance with law and that forcible possession would not be taken.

It may be noticed that learned trial Court on 14.1.1993 in the relief clause decreed the suit in the following manner:-

> "19. In view of my findings on the above issues, the suit of the plaintiffs succeeds partly for declaration and possession of land measuring 25 kanals 2 marlas. The suit of the plaintiffs is decreed for declaration to the effect that the plaintiffs are owners of land measuring 50 kanals 5 marlas fully detailed in the head note of the plaint as entered in the jamabandi for the year 1985-86 situated at village Khem Karan, Tehsil Patti and they are also entitled to possession in the alternative of land measuring 25 kanals 2 marlas comprising rectangle and killa Nos.185//2min(4-13), 3(8-0), 8(8-0), 185//13/1 (4-9) in favour of the plaintiffs and against the defendants with proportionate costs. The relief of permanent injunction is declined. Decree sheet be prepared. File be consigned to record room."

The said order of the learned trial Court has been upheld by the learned lower Appellate Court vide its judgment and decree dated 12.11.1999. A perusal of the order of the learned trial Court would show that the suit of the plaintiffs for declaration and possession in respect of 25 kanals 2 marlas has also been decreed. In fact it is now the admitted position that the defendant Nos.1 to 3 (now appellants) are not claiming any right in respect of land measuring 25

kanals 2 marlas comprised in Rectangle No.185, Khasra No. 2 min, 3,8 and 13/1. Therefore, whatever rights have accrued to the plaintiffs against the defendants in respect of the said land measuring 25 kanals 2 marlas would stand. It is also not disputed that the plaintiffs are owners of the entire land measuring 50 kanals 5 marlas as detailed in the head note of the plaint. Besides, the decree for possession of land measuring 25 kanals 2 marlas is not disputed nor assailed by the appellants. In fact, it is the admitted stand of the learned counsel appearing for the respective parties that possession of the land measuring 25 kanals 3 marlas which is under mortgage can only be taken by getting it redeemed in accordance with law.

In view of the aforesaid circumstances, it is clarified that the plaintiffs are entitled to seek possession of the land measuring 25 kanals 2 marlas comprised in Rectangle No.185// 2 min,3, 8 and 13/1 in pursuance to the judgment and decree under appeal. However, the possession of land measuring 25 kanals 3 marlas comprised in Rectangle No.152, Khasra Nos. 21-22/1 and Rectangle No.153, Khasra No.25/2 would be taken in accordance with law by redeeming the said land. The judgments and decrees of the courts below shall stand modified to the extent as indicated. The appeal is accordingly disposed of. However,there shall be no order as to costs.

January 15,2007 (S.S.SARON)
nk JUDGE